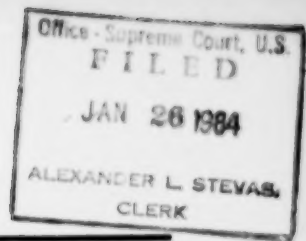


No. 83-793



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**IN THE  
SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1983

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WILLIAM E. HUGHES,  
*Petitioner,*

**v.**

ALAN S. WHITMER, Superintendent,  
Missouri State Highway Patrol,  
*Respondent.*

---

ON A WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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**BRIEF IN OPPOSITION TO THE PETITION  
FOR WRIT OF CERTIORARI**

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January, 1984

## QUESTIONS PRESENTED

1. Whether the appellate court's decision to address and decide the issues relating to the petitioner's First Amendment claims even though the district court had not reached these issues in its original opinion, is in conflict with the applicable authority of this or any other federal court?

2. Whether the appellate court was correctly following the precedent set down by this Court when it proceeded to decide the petitioner's First Amendment claims on the basis that the record before it was clearly sufficient to dispose of the question, the record was susceptible to only one *reasonable* interpretation on the issue, and effective judicial administration demanded such action?

3. Whether the appellate court correctly applied the appropriate precedent of this Court to the facts of this case when it determined that based on the record before it the respondent had not violated the petitioner's First Amendment rights when he transferred him from one troop area of the highway patrol to another?

4. Whether the appellate court correctly interpreted and applied the controlling precedent of this Court when it decided that the petitioner did not possess either a property or liberty interest entitling him to a specific assignment at a particular troop within the highway patrol, and thus rejected his contention that he was entitled to a due process hearing prior to his transfer to another troop area?

## II

### TABLE OF CONTENTS

Questions Presented .....	I
Statement of the Case .....	2
Reasons why the Writ Should be Denied—	
I. The Decision Of The Court Of Appeals To Address And Decide The Issues Relating To The Petitioner's First Amendment Claims, Even Though The District Court Had Not Reached These Issues In Its Original Opinion, Is Not In Conflict With The Applicable Authority Of This Or Any Other Federal Court, But Rather Follows Well Established Precedent Of This Court .....	9
II. There Is No Basis For This Court To Grant The Petition For Certiorari For The Purpose Of Reviewing The Appellate Court's Decision Relating To The Petitioner's First Amendment Claims Since It Is Clear From The Record In This Case That The Majority Opinion Of The United States Court Of Appeals For The Eighth Circuit Correctly Followed And Applied The Controlling Precedents Of This Court When It Decided The First Amendment Issues Against The Petitioner ..	16
III. This Court Should Refuse To Grant The Petitioner's Request For Certiorari In Order To Review The Appellate Court's Decision That Petitioner Was Not Entitled To A Hearing Prior To His Transfer From One Troop Of The Highway Patrol To Another Since The Petitioner Did Not Have A Legitimate Claim Of Entitlement To An Identifiable Property Or Liberty Interest In Remaining At One Troop Within The Missouri State Highway Patrol, And Thus No Right To A Hearing Prior To Transfer .....	17
Conclusion .....	20

### III

#### Table of Authorities

Bigelow v. Virginia, 421 U.S. 809 (1975) .....	10
Bishop v. Wood, 426 U.S. 341 (1976) .....	19
Board of Regents v. Roth, 408 U.S. 564 (1972) .....	19
Dayton Board of Education v. Brinkman, 443 U.S. 526 (1979) .....	10
Hormel v. Helvering, 312 U.S. 552 (1941) .....	10
Hughes v. Whitmer, 537 F.Supp. 93 (W.D.Mo. 1982) ....	1
Hughes v. Whitmer, 714 F.2d 1407 (8th Cir. 1982) .....	1
Levin v. Mississippi River Fuel Corporation, 386 U.S. 162 (1967) .....	11
MacFarlane v. Grasso, 696 F.2d 217 (2nd Cir. 1982) ....	9
Meachum v. Fano, 427 U.S. 215 (1976) .....	19
Paul v. Davis, 424 U.S. 693 (1976) .....	19
Perry v. Sindermann, 408 U.S. 593 (1972) .....	19
Wisconsin v. Constantineau, 400 U.S. 433 (1971) .....	19

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**BRIEF IN OPPOSITION TO THE PETITION  
FOR WRIT OF CERTIORARI**

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The respondent, Alan S. Whitmer, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Eighth Circuit's opinion in this case. That opinion is reported as *Hughes v. Whitmer*, 714 F.2d 1407 (8th Cir. 1982) and it reversed the opinion and judgment of the United States District Court for the Western District of Missouri in *Hughes v. Whitmer*, 537 F.Supp. 93 (W.D.Mo. 1982).

## STATEMENT OF THE CASE

Respondent believes that the majority opinion of the appellate court sets forth a complete and concise recitation of the facts pertinent to this case. Unlike the statement of the case presented by the petitioner which lifts matters out of context, distorts the record before the appellate court, and engages in the ethically questionable practice of attempting to bring before this Court matters *outside* the record in this case, Judge Gibson's presentation sets forth the pertinent facts relevant to this case. The appellate court set forth the record in the instant case as follows:

Trooper Hughes has been a member of the Patrol since 1970 and has spent almost all of his career assigned to Troop "G." Troop "G" is headquartered in Willow Springs, Missouri, and its members patrol the highways in the surrounding nine counties of south central Missouri. Hughes and his family have lived in Willow Springs during Hughes' ten-year tenure in Troop "G."

On Friday afternoon, October 16, 1981, Hughes was summoned to Troop "G" headquarters. When he arrived, Hughes was ushered into Captain McKee's office and told by Major Hoffman of Patrol headquarters that he was being transferred to Troop "C," at state expense, effective Monday, October 19, 1981. Troop "C" is a relatively urban assignment encompassing the counties surrounding the City of St. Louis. Its headquarters are in Kirkwood, Missouri, which is some 200 miles from Willow Springs.

Hughes reported for duty at Troop "C" on Monday, October 19, 1981, as ordered. Hughes was never notified officially of any complaint against him prior to the Superintendent's decision to order the transfer. Nor was Hughes given an opportunity to meet any of the charges against him or refute any of the factors which entered into the

Superintendent's decision to transfer him. Hughes still has not received written reasons for his transfer. His transfer order merely states that he is being transferred at state expense from Troop "G" to Troop "C" effective October 19, 1981.

Superintendent Whitmer, the ultimate transferring authority, Major Hoffman, whom the Superintendent ultimately relied upon in making the transfer decision, and Captain McKee of Troop "G" testified that the transfer was made to resolve a debilitating troop morale problem resulting from an intense personality dispute between Hughes and Lt. Elmore. Lt. Elmore was in charge of staff functions at Troop "G" headquarters but was not in the chain of command over Hughes.

Major Hoffman, who conducted interviews with a number of Troop "G" patrolmen, concluded that the major source of the friction between Hughes and Elmore was Hughes' investigation of Elmore's twenty-four-year-old son. Hughes suspected that Elmore's son was involved in illicit drug trafficking. Hughes reported these suspicions to Captain McKee, who in turn told Hughes to continue the investigation. As Hughes continued his investigation, he suspected that Lt. Elmore was leaking information about the investigation to his son. Hughes apparently told other Troop "G" officers about his suspicions regarding Lt. Elmore and made accusations regarding Elmore's son's involvement in drug activities. Hughes also told a Willow Springs neighbor that the neighbor's sixteen-year-old daughter had been seen at Lt. Elmore's house with Elmore's son. Elmore's son was married to another woman at the time. During their interviews with Hoffman, various Troop "G" officers expressed the view that Hughes had become too personally involved in Elmore's family affairs, hindering his own job performance and causing disharmony

within the Troop. After learning about Hughes' various investigations and accusations, Lt. Elmore reciprocated by conducting his own investigation of Hughes and by indicating his intention to file a defamation of character suit against Hughes.

At trial Hughes testified that he was transferred in retaliation for the Elmore investigation and his various other investigations. One of these other investigations involved the Mountain View Airport. Hughes was approached by three Mountain View citizens with information about suspicious late night airplane landings and takeoffs on a remote segment of the airport's runway. Hughes testified that he received information that a pilot had been offered a large sum of money to fly drugs in and out of the Mountain View Airport. Hughes passed this information to Captain McKee, who encouraged Hughes to conduct a surveillance at the airport. Later, a state representative whose plane was housed at the Mountain View Airport complained about Hughes' surveillance to Superintendent Whitmer. Despite this complaint, Captain McKee encouraged Hughes to continue the investigation and, at Hughes' request, placed a call to Jefferson City for special night surveillance equipment to aid in identifying the airplanes making night flights. Hughes testified that soon after he made the request for surveillance equipment, the suspicious night flights ceased. Hughes never again requested or received the night surveillance equipment. Hughes testified that he spent an entire year on his airport surveillance without finding any tangible evidence of impropriety.

Hughes also testified that he had received information that Captain McKee was involved in a ticket-fixing incident some six years ago. Captain McKee denied having ever fixed any traffic ticket. Hughes also testified that he had received information that Captain McKee and Lt. Hickman

were involved in a cover-up of a prisoner abuse incident. Hughes referred to a report written by Trooper Mitchell and Sergeant Zorsch indicating that an officer had allegedly struck an arrestee. Captain McKee allegedly concealed this report and, after interviewing the officer involved in the alleged beating, collaborated with Lt. Hickman in writing another report discrediting the arrestee's allegations. Sergeant Zorsch testified that while he believed some of the arrestee's allegations were true, Captain McKee could have reasonably reached a different conclusion and was not trying to coverup something.

Hughes testified that he told his wealthy industrialist friend, Claud Trieman, a member of the Governor's Crime Commission, about the alleged ticket fixing and prisoner abuse incidents.<sup>1</sup> Hughes did so in the hope that his friend could intercede with the higher echelon at Patrol headquarters to initiate some reform in Troop "G." Superintendent Whitmer and Major Hoffman testified that they were completely unaware of Hughes' suspicions of improprieties in Troop "G." Hughes testified that he never told Hoffman or anybody else within the Patrol's command staff about his suspicions.

Over the past few years Hughes also became involved in other incidents of some concern to the community and to his fellow officers. In 1977, while patrolling a wooded area, Hughes discovered two teachers engaged in a "compromising assignation." Hughes, while off-duty, reported this encounter to the school board. In 1979, Hughes was reprimanded for openly accusing a local postal employee of slashing the tires of Hughes' car without sufficient evidence to support his accusations. These accusations were

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<sup>1</sup>Hughes also enlisted the aid of this friend in Hughes' unsuccessful bid to become Superintendent of the Patrol. Major Hoffman became and is now the Superintendent of the Patrol.

made while Hughes was off-duty. Hughes was also criticized by some of his fellow officers for spending too much time patrolling the Mountain View area so that he could associate with his wealthy industrialist friend, Claud Trieman, while on duty and for filing baseless written reports accusing radio operators of dereliction of duty. Finally, some officers, including Lt. Hickman and Captain McKee, suspected that Hughes furnished a local sheriff with a copy of a Patrol investigation of the sheriff's alleged involvement in a timber theft.

On October 3, 1981, Lt. Elmore met with Superintendent Whitmer and suggested that Hughes be transferred to Troop "C." Superintendent Whitmer testified, however, that no decision concerning Hughes was reached at this meeting. It is unclear from the record when the decision to transfer Hughes was actually reached. Superintendent Whitmer was uncertain about the exact date, but surmised it was Thursday, October 15, 1981. Major Hoffman testified that the decision was made the morning of October 16, 1981, the day Hughes was told of the decision.

In any event, on October 4, Elmore returned to Troop "G" and told several troopers that he was having Hughes transferred to Troop "C." Dissension then began to mount in Troop "G" as troopers took sides over the rumored transfer of Hughes. Around October 7, Captain McKee testified that he reported this dissension to Major Hoffman. Major Hoffman then investigated the matter, interviewed a number of Troop "G" officers, and wrote a report, dated October 13, 1981, in which he concluded that there was a serious morale problem in Troop "G" because of the conflict between Lt. Elmore and Trooper Hughes. Major Hoffman recommended that both Elmore and Hughes be transferred to correct the situation.

Almost simultaneously with Major Hoffman's investi-

gation, Lt. Elmore wrote his own memorandum entitled "Disciplinary Action—Trooper W. E. Hughes." In this memorandum Elmore stated that Hughes had caused Troop "G" to lose its effectiveness because of Hughes' "seemingly uncontrollable actions" and recommended that Hughes be transferred. These "uncontrollable actions" included Hughes' investigation of Elmore's son, Hughes' close relationship with Claud Trieman, and Hughes' "actions toward other public and private individuals."

Lt. Hickman added his own remarks to Lt. Elmore's memorandum and also recommended Hughes' transfer. Hickman noted that Hughes never consulted him regarding the investigation of Elmore's son and that Hughes was spending too much of his time patrolling the Mountain View area, where an officer was already stationed. Hickman added his suspicion that Hughes had given a local sheriff a copy of a Patrol investigation report concerning the sheriff.

Captain McKee also attached his remarks to this memorandum, suggesting that because the intense bitterness between Hughes and Elmore was disrupting the entire troop, Hughes should be transferred at state expense to another troop. McKee also noted Hughes' various "controversial actions," including his report about the two school teachers, his foundless accusations that a fellow resident had slashed Hughes' car tires, and his on-the-job association with Claud Trieman in the Mountain View area who allegedly was to help Hughes in his bid to become Superintendent. McKee also wrote another report in which he recommended that Lt. Elmore also be transferred because he had contributed to dissension in Troop "G."

Superintendent Whitmer endorsed the reports written by Major Hoffman and Captain McKee. Whitmer also signed the memorandum that included the recommenda-

tions of Lt. Elmore, Lt. Hickman, and Captain McKee. Whitmer, believing that both Hughes and Elmore had contributed to dissension in the troop, transferred Hughes to Troop "C," effective October 19, 1981, and transferred Lt. Elmore to Troop "D," effective November 1, 1981. Hughes was offered moving expenses and was provided the same job status and pay in Troop "C" as he had enjoyed in Troop "G."

Two weeks after the transfer decision, Hughes filed this § 1983 suit in federal district court claiming that the state's failure to provide him with a name-clearing hearing violated his substantive and procedural fourteenth amendment due process rights as well as his right to equal protection. U.S. Const. Amend. XIV. Hughes also alleged that he was transferred in retaliation for exercising his first amendment rights. The district court held that Hughes' transfer was disciplinary and, therefore, under Missouri law, Hughes was entitled to a due process hearing before he could be transferred. The district court enjoined the Patrol's order transferring Hughes to Troop "C" until the Patrol provides Hughes with a hearing. The appeal to the Eighth Circuit Court of Appeals ensued.

After the appellate court entered its decision, the petitioner requested a rehearing by the entire court. The court refused to rehear the case, although four judges, including the dissenter in division, stated that they would have granted rehearing on the First Amendment question *only*. This petition for certiorari followed.

## REASONS WHY THE WRIT SHOULD BE DENIED

### I.

The decision of the Court of Appeals to address and decide the issues relating to the petitioner's First Amendment claims, even though the district court had not reached these issues in its original opinion, is not in conflict with the applicable authority of this or any other federal court, but rather follows well established precedent of this court.

In his first reason presented in support of his request for certiorari, the petitioner attempts to convince this Court that the decision of the Court of Appeals is contrary to decisions of other federal appellate courts. The petitioner calls upon this Court to exercise its supervisory power over the lower federal courts, and resolve this alleged conflict. In truth, the petitioner has contrived this so-called conflict among the circuits when one does not in fact exist.

Precisely, petitioner contends that the Court of Appeals erred when it proceeded to decide his claim that his transfer from one highway patrol troop to another was designed to punish him for the exercise by him of his First Amendment rights. Petitioner contends that although the record had been fully developed in the district court, the appellate court should have remanded the case to the district judge for his initial findings and decision on these First Amendment claims. In support of his contention that the course taken by the appellate court in this instance conflicts with decisions of other federal appellate courts, and departs from the "usual practice" in cases where the district court has not reached a particular issue, the petitioner cites several decisions.

The primary decision relied upon by the petitioner to support his conflict argument is *MacFarlane v. Grasso*,

696 F.2d 217 (2nd Cir. 1982). However, this case is inapposite. In *Grasso*, the appeal was from a judgment sustaining the defendant's motion to dismiss for failure to state a claim. There had been absolutely *no record* developed in the lower court on the plaintiff's First Amendment contentions, and thus a remand was the only alternative open to the appellate court once it decided that the lower court had erred in granting the defendant's motion to dismiss for failure to state a claim relating to the plaintiff's First Amendment contentions. This was not the situation in the case at bar since the petitioner had been given his day in court, and had presented all of his evidence on his First Amendment claims. Therefore, it is ludicrous to contend that the decision of the Eighth Circuit in the instant case conflicts with that of the Second Circuit in *Grasso*. This in essence destroys the petitioner's conflict in the circuits contention. Furthermore, the petitioner's contention that the appellate court departed from the "usual" practice of remanding for initial findings and decision by the district court on the First Amendment issues does not provide him with a basis for seeking review by this Court.

In presenting his concocted argument that the appellate court did not follow the normal practice of remanding, the petitioner totally ignores an entire line of decisions by this Court holding that remand is inappropriate where the facts on the record are susceptible to only one reasonable interpretation. *Dayton Board of Education v. Brinkman*, 443 U.S. 526 (1979); *Bigelow v. Virginia*, 421 U.S. 809 (1975). As this Court has pointed out, the general rule that an appellate court should remand when the lower court has not reached a particular issue in its original order is not an inflexible one, and it does give way in those circumstances where the record before the appellate court leads to only reasonable result on the legal issue presented. *Hormel v. Helvering*, 312 U.S. 552 (1941). This Court suc-

cintly pointed out in the case of *Levin v. Mississippi River Fuel Corporation*, 386 U.S. 162 (1967), that in such cases "[e]ffective judicial administration" requires that the court of appeals draw the inescapable factual conclusion itself, rather than remand the case to the district court for further needless proceedings.

Despite the efforts of both the petitioner, and the dissenter in the appellate court, to concoct some sort of credibility issue necessitating remand, it is clear that the majority opinion in the Eighth Circuit was following this Court's admonitions in the above cases when it reached the petitioner's First Amendment claims and decided them based upon the record before it. This is best shown by an examination of Judge Gibson's majority decision itself.

In this case, the majority of the appellate court proceeded to decide the petitioner's First Amendment claims because the record was clearly sufficient to dispose of the question, the record was susceptible to only one reasonable interpretation on the issue, and judicial economy as expressed by this Court's prior opinions demanded such action. See Appendix at 18, 20 and 33. In this regard, the majority opinion specifically held:

"In this case, the record before us is sufficient to dispose of Hughes' claim that he was retaliated against for exercising his first amendment rights.

....

Despite the district court's failure to so find, the evidence in the record clearly shows that there was a substantial morale problem in Troop 'G' due to a personality dispute between Lt. Elmore and Hughes. Superintendent Whitmer, the ultimate transferring authority, Major Hoffman, whom the Superintendent ultimately relied upon in making the transfer decision, and Captain McKee all testified that an intense per-

sonality conflict existed between Elmore and Hughes. Major Hoffman, who conducted interviews with a number of Troop 'G' patrolmen, including Elmore and Hughes, concluded that because of this conflict, Hughes and Elmore had lost their effectiveness and were disrupting the effectiveness of the entire troop. Major Hoffman determined that the major source of the friction between Hughes and Elmore was Hughes' various investigations and allegations regarding Elmore's son's drug-related activities. Hughes had also apparently become involved in a problem between the Elmore family and the parents of a 16-year-old girl who had been dating Elmore's son. Elmore reciprocated by conducting his own investigation of Hughes and by indicating his intention to file a defamation of character suit against Hughes. During their interviews with Hoffman, both Hughes and Elmore expressed their personal dislike for each other.

. . . .

Based on the foregoing evidence, we believe the Superintendent reasonably concluded that both Hughes and Elmore contributed to the morale problem in Troop 'G,' leading the Superintendent to exercise his statutory discretion and reassign both officers to other troops. . . .

Furthermore, the transfer decision here was an entirely appropriate and reasonable means of achieving the Patrol's significant interest in maintaining discipline and harmony. Admittedly, a transfer traceable to speech-related activity is properly the subject of first amendment challenge, even though the transfer resulted in no loss of pay, seniority, or other benefit. [Citations omitted]. However, because the officers in Troop 'G' had divided their loyalties between Hughes

and Elmore, the Superintendent was required to devise a solution that would appear completely impartial and, at the same time, improve the morale and efficiency of the troop. With this in mind, the Superintendent viewed a transfer of both Elmore and Hughes as an effective, nondiscriminatory and nonpunitive solution to the morale problem. . . ." (Appendix at 18-25)

On the petitioner's contention that his co-called whistle-blowing activities might have been the basis for his transfer to another troop, the majority observed:

"Hughes claims that his transfer was made in retaliation for his investigations and allegations regarding the ticket-fixing incident and the cover-up of the police brutality incident. Were this true, a different case would be presented. [Citation omitted]. However, the evidence clearly shows neither Superintendent Whitmer nor Major Hoffman ever knew about, let alone disapproved of or attempted to interfere with, Hughes' investigations and expressions regarding the alleged ticket-fixing or police brutality. Furthermore, there is no evidence that the dissension that existed within Troop 'G' was even remotely related to Hughes' investigations and expressions regarding these alleged improprieties. Superintendent Whitmer testified that he was completely unaware of Hughes' allegations of improprieties until Hughes testified about them at trial. Major Hoffman testified that the alleged improprieties were never mentioned by any of the troopers he interviewed, not even by Hughes. Hughes testified that despite having the opportunity, he never told Hoffman or anybody else within the Patrol's command staff about his investigations concerning these alleged improprieties; nor did Hughes ever file any report

regarding these incidents. Under the circumstances, we do not believe Hughes has shown or indeed can ever show that his reputed whistle-blowing investigations were what caused his transfer." (Appendix at 30, 31)

Finally, the majority reached the petitioner's rather esoteric "political association" argument and concluded:

"Despite the dissent's suggestion, there is no support for Hughes' claim that his off-duty first amendment protected association with Claud Trieman was a 'motivating factor' behind the transfer decision, let alone the 'but for' cause of the transfer decision. [Citation omitted]. The record does show that other troopers complained that Hughes' on-the-job association with Trieman was interfering with the performance of his duties. Troopers also expressed the belief that Hughes was currying favors in order to elicit Trieman's support in his bid for the Superintendent's position. However, even the dissent is not so bold as to suggest Hughes' associational rights permit him to associate with whomever he likes and whenever he likes while he is on duty. And, even assuming this criticism of Hughes' on-duty association with Trieman is interpreted as an implied criticism of Hughes' legitimate off-duty association with Trieman, we believe the record clearly shows that the transfer decision would have been made regardless of such association. The primary source of the dissension in Troop 'G' concerned Hughes' and Elmore's battle over Elmore's son's possible involvement in drug-related activity. Hughes' association with Trieman was peripheral to this dissension and, hence, was not at the center of the Superintendent's effort to remedy the dissension by transferring both Hughes and Elmore out of Troop 'G.' " (Appendix at 32, 33).

In light of the record before it, the majority of the Court of Appeals concluded that "it is unnecessary and would be a waste of judicial resources to remand this case to the district court. . . ." (Appendix at 33). The majority of the appellate court was clearly following this Court's decisions as to when it is appropriate for an appellate court to decide an issue rather than remand it to the district court.

In an hysterical attempt to challenge this course of action by the majority of the appellate court, both the petitioner and the dissenting judge in the Eighth Circuit, have concocted the position that somehow credibility judgments are involved in deciding the First Amendment claims presented by Hughes, and these judgments should be left to the district court in the first instance. The petitioner even goes so far as to engage in the ethically questionable practice of bringing information before this Court that was not part of the record below, did not even exist at the time the transfer decisions were made, and thus has no relevancy to the issues currently before the Court.<sup>2</sup> As the majority of the Court of Appeals pointed out, the only way the dissent and the petitioner can support this credibility argument so as to justify a remand is by distorting the actual record that was before the appellate court. See Appendix at 22, 23 and 32, fn. 13, 14 and 20. Obviously, the majority refused to go along with this contrived position and distortion of the record presented by the dissenting opinion and the petitioner, and proceeded to determine the issue based upon the actual record before it. An examination of the record leads to only one conclusion, that the petitioner and Lt. Elmore were transferred from Troop "G" to other troops

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<sup>2</sup>The petitioner's half-hearted effort to justify his attempts to bring before this Court evidence not a part of the record in this case by invoking the rule on requests for admissions is clearly laughable.

within the highway patrol system because of the dissension that their personal conflicts had caused within Troop "G." Thus, the appellate court was acting well within its discretion in proceeding to decide the petitioner's First Amendment claims, and there is no reason for this Court to grant certiorari on this question.

## II.

There is no basis for this court to grant the petition for certiorari for the purpose of reviewing the appellate court's decision relating to the petitioner's First Amendment claims since it is clear from the record in this case that the majority opinion of the United States Court of Appeals for the Eighth Circuit correctly followed and applied the controlling precedents of this court when it decided the First Amendment issues against the petitioner.

In Point II of his petition for certiorari Mr. Hughes urges this Court to grant his writ so that it might review the decision of the Court of Appeals rejecting his First Amendment contentions on the merits. In a truly extraordinary harangue better suited to the *National Enquirer* than a petition filed with the United States Supreme Court, Hughes accuses both the Missouri State Highway Patrol and Judges Floyd and John Gibson of the United States Court of Appeals for the Eighth Circuit of engaging in a Watergate-type conspiracy for the purpose of denying him his rights as guaranteed by the First Amendment to the United States Constitution. In essence, one must presume that Mr. Hughes is of the opinion that if a federal appellate court disagrees with his contentions, its members are automatically guilty of a criminal conspiracy. A more absurd theory could not be conceived.

The respondent relies upon the well-reasoned decision of the majority of the Court of Appeals in urging this

Court to reject this contention of the petitioner, and his request for certiorari on this ground. An examination of Judge Gibson's majority opinion makes it clear that in deciding the First Amendment issues presented to the Court by Mr. Hughes, the appellate court applied the correct precedent from this Court to the issues. Not even petitioner's counsel is so bold as to assert that Judge Gibson ignored the correct law on the issue when he decided the First Amendment contentions against Mr. Hughes. Respondent further asserts that an examination of the majority opinion reveals that Judge Gibson correctly applied the controlling legal precedent on this issue to the facts of the Hughes' case.

Consequently, in light of the state of the record and the well-reasoned decision of the majority of the Eighth Circuit, respondent sees no reason for this Court to review the decision below. The appellate court's decision is not in conflict with any prior decision of this Court nor of any other federal appellate court. Furthermore, the petitioner does not present a novel legal issue here but rather one that has been previously addressed and resolved by this Court. The law on this subject has been clearly enunciated by this Court, and it needs no further elaboration or clarification. Therefore, another decision by the Court in this area of the law would have little precedential impact. This being the case, there is no reason for this Court to grant certiorari to review the appellate court's decision on this issue.

### III.

This court should refuse to grant the petitioner's request for certiorari in order to review the appellate court's decision that petitioner was not entitled to a hearing prior to his transfer from one troop of the highway patrol to another since the petitioner did not have a legitimate claim

**of entitlement to an identifiable property or liberty interest in remaining at one troop within the Missouri State Highway Patrol, and thus no right to a hearing prior to transfer.**

In Argument III the petitioner asks this Court to review the decision of the appellate court rejecting his contention that he was entitled to a due process hearing prior to his transfer from one troop of the Missouri State Highway Patrol to another. In making this request, the petitioner is forced to rely upon the original decision of the district court in this case since no one except Judge Wright has agreed with this contention at any time in these proceedings. Even Judge McMillian who dissented from the majority opinion in the appellate court on the First Amendment issue agreed with the majority's decision rejecting petitioner's claim of entitlement to a due process hearing prior to his transfer. In fact no one on the Court of Appeals expressed agreement with this position of the petitioner. Certainly, these facts account for the petitioner's suggestion that he should not be required to present "full argument" on this issue in his petition for certiorari but that said argument is better reserved for the brief on the merits. As the majority opinion so clearly points out, there is no basis whatsoever for this contention of the petitioner, and it is clear that his "argument" in support of this position would fall like a house of cards if he is attempted to set it forth fully in his petition for certiorari.

Once again, respondent relies upon the well-reasoned decision of the Court of Appeals rejecting the petitioner's contention that he was entitled to a hearing prior to his transfer in urging this Court to reject Hughes' request for review on this issue. It is clear that the appellate court applied the correct precedent of this Court when it decided that petitioner did not have a legitimate claim of entitlement to an identifiable property or liberty interest, and thus was not entitled to a due process hearing prior to his

transfer from one troop of the Missouri State Highway Patrol to another. In reaching this result, the Court of Appeals followed the precedent established by this Court in *Board of Regents v. Roth*, 408 U.S. 564 (1972), *Perry v. Sindermann*, 408 U.S. 593 (1972), *Bishop v. Wood*, 426 U.S. 341 (1976), *Wisconsin v. Constantineau*, 400 U.S. 433 (1971), *Paul v. Davis*, 424 U.S. 693 (1976) and *Meachum v. Fano*, 427 U.S. 215 (1976). In addition there is no question but that the appellate court correctly applied these legal precedents to the facts of the instant case.

Specifically, after appropriately analyzing Missouri law on the subject, the Court of Appeals held:

"Hughes, therefore, has no due process property interest in his assignment to Troop 'G.' At best, he has exhibited an unilateral hope of permanent residence in Willow Springs." (Appendix at 11, 12)

In addition, the court rejected the petitioner's contention that he was entitled to a due process hearing based upon his asserted liberty interest as follows:

"Even if we assume for the sake of argument that Hughes' transfer publicly communicated the impression that Hughes had committed a serious infraction, we conclude that Hughes has failed to show some change of legal status that occurred in conjunction with the release of the stigmatizing information." (Appendix at 16)

Furthermore, as was the case with Argument II of petitioner, he does not present a novel legal issue here but rather one that has been previously addressed and resolved by this Court. The law on this subject has been clearly enunciated by this Court, and it needs no further elaboration or clarification. Another decision by the Court in this area would have little precedential impact. Consequently, respondent submits that there is no reason for this Court

to grant certiorari for the purpose of reviewing the appellate court's decision regarding the petitioner's due process claims.

### **CONCLUSION**

For these reasons the petition for certiorari should be denied.

Respectfully submitted,

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